

TOWN OF WELLESLEY



MASSACHUSETTS

ZONING BOARD OF APPEALS

888 WORCESTER STREET, SUITE 160, WELLESLEY, MA 02482

J. RANDOLPH BECKER, CHAIRMAN
ROBERT W. LEVY, VICE CHAIRMAN
DAVID G. SHEFFIELD

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ZBA 2021-56
Petition of Edward & Michelle Jacobs
97 Russell Road

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, July 1, 2021 at 7:30 pm, in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of Edward & Michelle Jacobs requesting a Variance pursuant to the provisions of Section 14E, Section 19, Section 24 and Section 25 of the Zoning Bylaw for demolition of an existing nonconforming structure with less than required front and left side yard setbacks, and construction of a three story structure with less than required front yard and rear yard setbacks, and construction of a garage with less than required left side yard and rear yard setbacks, on a 7,546 square foot lot in a Single Residence District in which the minimum lot size is 10,000 square feet, in a Water Supply Protection District, at 97 Russell Road.

On May 13, 2021, the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

On September 30, 2021, the Petitioner submitted a request to amend the requested relief as follows: Petition of Edward & Michelle Jacobs requesting a Special Permit, a Special Permit/Finding and a Variance pursuant to the provisions of Section 14E, Section 17, Section 19, Section 22D, Section 24 and Section 25 of the Zoning Bylaw to demolish the existing nonconforming structure with less than required frontage, front yard and side yard setbacks, and to construct a new dwelling and carport with less than required frontage, front and side yard setbacks, installation of three heat pump condensers with less than required side yard setbacks, and construction of retaining walls over four feet high within 10 feet of the property line, on a 7,546 square foot lot in a Single Residence District in which the minimum lot size is 10,000 square feet, in a Water Supply Protection District, at 97 Russell Road, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure. Notice of the amended request was given by mailing and publication.

Present on behalf of the petition were Michelle and Edward Jacobs, the Petitioner, David Kinsella, Oscar Mertz, Architect, and Jason Indelicato, Construction Manager.

The Chairman said that the property is located in a Water Supply Protection District and a Wetlands Protection area. He said that nothing was submitted that addressed wetlands protection or how runoff will be treated. Ms. Jacobs said that the Wetlands Protection Committee (WPC) reviewed their request for a waiver to relocate the house on a new footprint on resource land. She said that the WPC recommended that the petition go to the Zoning Board of Appeals (ZBA) first to have a hardship defined. She said that the Department of Public Works (DPW) reviewed a full drainage plan.

Ms. Jacobs said that the request is for a variance to relocate the house outside of the existing footprint. She said that the proposed structure cannot meet setback requirements due to the topography and size of the property. She said that the proposed setbacks will not be more nonconforming.

The Chairman asked for an explanation of how the requirements of Section 24 of the Zoning Bylaw relate to the proposed construction. Mr. Indelicato said that the topography is complicated. He said that the design of the home is such that it fits with the topography, the surrounding neighborhood and Morses Pond. Mr. Mertz said that the lot size is nonconforming and it is very steep. He said that the existing setbacks are five and ten feet. He said that the driveway area is the only level area where they can park.

The Board discussed concerns about setbacks, height and overhang on the proposed garage, and siting a building adjacent to town owned land less than 10 feet from the property lines. The Chairman said that he could not recall another property where the road terminates at the lot. He said this is not a typical situation for determining side yard setbacks. He discussed limited access to the site and limited area for construction laydown and staging. Mr. Indelicato said that they will submit a Construction Management Plan (CMP) and all of the documentation regarding the wetlands to the Board.

The Board voted unanimously to continue the petition to September 2, 2021.

September 2, 2021

At the request of the Petitioner, the Board voted unanimously to continue the hearing to October 7, 2021.

October 7, 2021

Present on behalf of the petitioners was James Goodhue, Esq.

Mr. Goodhue said that a revised set of plans was submitted. He said that his letter outlined the specific areas where the Petitioner is seeking relief, based on input from the Building Department.

Ms. Jacobs said that planters that were shown on the original plot plan were removed. She said that the Planning Department and Michael Grant, Building Inspector, helped them to define the 20 feet that abuts Russell Road as the frontage and the front yard setback, the west side of the property that abuts Morses Pond as the rear setback, the north side of the property that abuts the neighbor as a side setback, and the east and west property lines that abut town land as side yard setbacks.

Mr. Goodhue said that because of the shape of the lot, the house would have to be 10 feet wide through the course of the lot to comply with setback requirements. He said that the proposed structure will be less nonconforming because the encroachment on town land will be removed.

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Ms. Jacobs said that the 100 foot wetlands buffer affects approximately 90 percent of the land. She said that their offer to buy the land where they encroach was refused by the town. She said that the additional space would have allowed them to rebuild in the same location. She said that their second option was to go to the ZBA for definition of a hardship and then go back to the WPC.

Ms. Jacobs said that they shared the plans with all of their neighbors on Russell Road and letters of support were submitted to the Board.

The Board voted unanimously to continue the hearing to December 2, 2021.

December 2, 2021

At the request of the Petitioner, the Board voted unanimously to continue the hearing to January 6, 2022.

January 6, 2021

Mr. Goodhue said that subsequent to the October 7, 2021 public hearing, the Petitioner submitted additional applications for relief for ac condensers and retaining walls, as well as a CMP and manufacturer's specifications for the ac. He said that Ms. Jacobs spoke with the direct abutting neighbor on the north side of the property about the ac and there was no opposition.

The Chairman asked about justification for encroachment into the 10 foot setback from town land. Mr. Jacobs said that they will be completely removing the encroachment on town property. He said that they were not able to put a garage in the main house because of the topography. He said that the setback of the garage on the south property line is partly dictated by the adjacent neighbor parking on the private drive in front of their property because they have no off-street parking. He said that his driveway is adjacent to where the neighbors park their car. He said that they need space in the driveway in front of the garage to come around a parked car to get into the driveway. He said that the carport is pushed as far as possible to allow them to get the cars inside. He said that driving out of the carport, it would not be possible to circumvent a car that is parked in the street in front of the driveway if the carport is positioned where the existing house is.

Mr. Jacobs discussed his meeting with the Town Engineers and an agreement to have DPW review the area before putting any shovels in the ground.

The Board voted unanimously to continue the petition to March 17, 2022.

March 17, 2022

The Chairman said that the Board received an ANR plan for approval by the Planning Board as an adequate way on Russell Road. He said that he spoke with Julie Meyer, Wetlands Administrator, today and she indicated that the WPC will be meeting on March 31, 2022 to finish their review and take action on this case.

Ms. Jacobs discussed a Summary of Updates that was submitted after their surveyor completed the Adequacy of the Way Plan. She said that the Planning Board is scheduled to review the application for

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Adequacy of the Way on May 2, 2022. She said that the 14 inch water main has been located with metal detectors and staked. She said that DPW will approve the spacing before any shovel hits the ground.

Ms. Jacobs said that in response to DPW's request, they will restore, replace or resurface the parking area at the end of Russell Road after completion of construction. She said that DPW requested that 18 inch concrete raised bounds be put in the ground at the property corners to ensure that there are clear markers of the property lines between 97 Russell Road and the town property to ensure against encroachment again.

Ms. Jacobs said that there is no definition of hardship in the Wetlands Bylaws. She said that WPC told the Applicant to go through the ZBA process first for a definition of hardship in accordance with the Zoning Bylaws (ZBL) and then go back to WPC for approval to move the footprint of the house. The Board discussed concerns that the ZBA definition of hardship only applies to the variance and not to work in the buffer zone, that if the Board finds a hardship under the ZBL, it is not transferrable or applicable under the Wetlands Protection Act, as they are subject to different standards. A Board member suggested that a representative from the WPC call Town Counsel for his opinion.

The Board voted unanimously to continue the petition to May 5, 2022.

May 5, 2022

At the request of the Petitioner, the Board voted unanimously to continue the petition to July 7, 2022.

July 7, 2022

At the request of the Petitioner, the Board voted unanimously to continue the petition to August 4, 2022.

August 4, 2022

Mr. Goodhue said that the WPC approved an Order of Conditions for the project. He said that the Petitioner updated materials including Adequacy of the Way, a revised CMP and updated stormwater management in accordance with comments from the Town Engineer.

There was no member of the public who wished to speak to the petition.

Statement of Facts

The subject property is located at 97 Russell Road, on a 7,546 square foot lot in a Single Residence District in which the minimum lot size is 10,000 square feet, in a Water Supply Protection District, with a minimum front yard setback of 5 feet where 30 feet is required, minimum frontage of 20 feet where 60 feet is required, a minimum left side yard setback of zero feet where 20 feet is required, and a minimum setback of zero feet from Town land where 10 feet is required.

The Petitioner is requesting a Special Permit, a Special Permit/Finding and a Variance pursuant to the provisions of Section 14E, Section 17, Section 19, Section 22D, Section 24 and Section 25 of the Zoning Bylaw to demolish the existing nonconforming structure with less than required frontage, front yard and side yard setbacks, and to construct a new dwelling and carport with less than required frontage, front and



side yard setbacks, installation of three heat pump condensers with less than required side yard setbacks, and construction of retaining walls over four feet high within 10 feet of the property line, on a 7,546 square foot lot in a Single Residence District in which the minimum lot size is 10,000 square feet, in a Water Supply Protection District, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Submittals from Petitioner:

- A Variance Narrative
- Letter to Zoning Board of Appeals, dated 9/30/21, from James A. Goodhue, Esq.
- A Plot Plan, dated 9/6/17, revised 4/8/21, stamped by Dennis B. O'Brien, Professional Land Surveyor
- Existing Conditions, dated 8/13/19
- Proposed Site Plan, dated 9/21/19, revised 4/9/20 & 9/25/21
- Proposed Site Plan, dated 9/21/19, revised 4/9/20 & 9/25/21 (Sheets 1 to 3), stamped by Anthony Stella, P.E.
- Floor Plans dated 10/17/20, revised 8/4/21 & 12/12/21, Elevation Drawings dated 11/17/20, 8/4/21 & 12/12/21, and Average Grade Roof Height Calculation, dated 5/22/21, stamped by Oscar E. Mertz III, Registered Architect
- TLAG Calculation, original & revised on 8/4/21
- Revised Stormwater Management Report, dated 12/18/17, revised 4/8/20 & 9/27/21
- Letter to George Saraceno, Senior Civil Engineer, Town of Wellesley, dated 5/8/22, prepared by Site Engineering Consultants, Inc.
- Landscape Prep/Transplant; Plant Images, dated 2/25/20, Landscape Materials Plan, dated 2/25/20, revised 5/13/20, 5/27/20, 3/23/21, 8/6/21, 5/19/22, 6/13/22, Images, dated/ 5/19/22, Erosion Control and Landscape Prep Plan2 (D1 & D2), dated 2/25/20, revised 5/13/20, 5/27/20, 5/19/22, 6/13/22, 7/8/22, prepared by M.A. Desjardins, Landscape Architecture
- Retaining Walls 4 Feet or Over – Summary, dated 8/4/21, Cross Section Drawing, dated 1/29/20 & 8/4/21, Sections & Elevations, dated 12/13/19, stamped by Melissa Desjardins
- Topographic Plan of Land, dated 2/26/13, Plan Showing Proposed Building – Existing Lot Coverage and Plan Showing Proposed Building – Existing & Proposed Lot Coverage, dated 9/6/17, revised 12/10/21, prepared by D. O'Brien Land Surveying
- HVAC Proposal, dated 12/13/21 and Construction Management Plan, prepared by Beechtree Development
- Request for Adequacy of Way and Application Form, dated 1/4/22
- Plan and Profile of Unaccepted Portion of Russell Road, dated 3/16/22, stamped by Dennis B. O'Brien, Professional Land Surveyor
- Escrow Agreement, dated 5/27/22
- Agreement to Upgrade, dated 5/27/22
- Field Stone Retaining Wall Plan, stamped by Chris R Jayavendra, P.E.
- Renderings
- Photographs

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On June 30, 2021, October 5, 2021, December 2, 2021 and January 5, 2022, and August 2, 2022, the Planning Board reviewed the petition and recommended that a special permit be approved.

On March 16, 2022, the Design Review Board review the retaining walls and voted unanimously to accept the application as presented, subject to recommendations.

On April 29, 2022, George Saraceno, Senior Civil Engineer, Town of Wellesley Engineering Division, submitted comments. On August 4, 2022, Rafi Razzaque, Civil Engineer, Town of Wellesley, submitted comments.

On July 19, 2022, the Wetlands Protection Committee issued Order of Conditions, #324-1003.

DECISION

The Board found that the Design and Operation Standards in Part F are adequately satisfied and not otherwise prohibited in Part D.1, of Section 14E of the Zoning Bylaw for Water Supply Protection Districts.

This Authority has made a careful study of the materials submitted and the information presented at the hearing, and has documented the results of the study above. Based on the results of the study, on October 12, 2022, the Board voted unanimously to grant the following relief:

VARIANCE

It is the opinion of this Authority that literal enforcement of the provisions of the Zoning Bylaw would involve substantial hardship, financial or otherwise, to the petitioner owing to circumstances relating to the shape and topography of such land, which does not generally affect the zoning district in which it is located, the hardship has not been self-created, and desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw.

Therefore, the requested Variance from the terms of Section 19 and pursuant to the provisions of Section 24-D of the Zoning Bylaw is granted to allow for demolition of an existing nonconforming structure with less than required front and left side yard setbacks, and construction of a three story structure with less than required front yard and rear yard setbacks, and construction of a garage with less than required left side yard and rear yard setbacks, and installation of three heat pump condensers with less than required side yard setbacks, subject to the following conditions.

SPECIAL PERMIT

It is the opinion of this Authority that construction of a retaining that will exceed four (4) feet in height and be located within ten (10) feet of a property line will otherwise be in compliance with the provisions of Section 22 D, will not adversely impact adjacent property or the public, that the report of the Design Review Board has been received and that requested retaining wall is consistent with that report and those criteria contained in Section 22, Design Review, Part C., Design Criteria, of the Zoning Bylaw; and the proposed retaining wall is the minimum structure necessary to allow a subject property to be reasonably utilized.

Therefore, a Special Permit is granted for construction of a retaining that will exceed four (4) feet in height and be located within ten (10) feet of a property line, in accordance with the plans dated, 5/28/22.

The Inspector of Buildings is hereby authorized to issue a permit for construction upon receipt and approval of a building application and detailed constructions plans. If construction has not commenced, except for good cause, the Variance shall expire one year after the date time stamped on this decision.

CONDITIONS TO THE DECISION

The Board's approval is subject to the Applicant's and the Project's compliance with the following conditions. All requirements imposed by these conditions or this Permit shall be applicable to the Applicant, its successors and assigns, and all users of the Project, regardless of whether the condition specifically identifies the Applicant or no entity as having responsibility for a particular condition.

General

- 1, This Permit authorizes the demolition of a one-story single-family residence and the construction, use and occupancy of a project comprised of a two-story wood frame house, along with associated carport and infrastructure, as shown on the Approved Plans above.
2. The Project shall be constructed in accordance with the Approved Plans and written materials specified above, subject to modifications required below.
3. By accepting this approval, the Applicant agrees to the terms, covenants and conditions and agreements contained herein.
4. Except for the relief granted by the Board as listed in these Conditions, the Applicant shall comply with all provisions of the Zoning Bylaw and general bylaws generally applicable to a project approved in October, 2022.
5. Contract documents, including working drawings and specifications for the Project shall undergo the usual and customary review and approvals of the Building Inspector, the Town Engineer, or any other applicable local inspector or board.
6. The Project shall be designed and constructed substantially in compliance with the drawings and data submitted with the application for approval, except as modified by these Conditions.

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Design Conditions

7. Design and construction of the Project shall fully comply with all applicable federal and state laws and regulations, including, but not limited to, the requirements of the Massachusetts State Building Code (780 CMR). The Project shall be designed and constructed on the Site in accordance with the Approved Plans, except as provided in this approval, including these Conditions. Any requirement of consistency with the Approved Plans means as those Approved Plans are modified by the Conditions.

8. There shall be no pavement added to the Project beyond that which is depicted on the Approved Plans and there shall be no additional accessory structures added to the Project or to the Site other than that which is shown on the Approved Plans.
9. All utilities to serve the Site shall be installed underground (with the exception of junction boxes, transformers and similar appurtenances) by the Applicant using methods standard to those installations. Utilities shall include electric service lines, gas service, telephone lines, water service lines, CATV lines, municipal conduit, and the like.
10. The water, wastewater, drainage, and stormwater management systems servicing the building shall be installed and tested in accordance with applicable Town standard requirements and protocols.

Construction Conditions

11. The Applicant shall implement its undated "Construction Management Plan – 97 Russell Road, Wellesley MA", as modified by these Conditions.
12. During the period of construction, all construction equipment and materials deliveries shall utilize: (1) Route 9 (Worcester Street) to Russell Road to Site for eastbound traffic; or Worcester Street to Fells Road to Russell Road for westbound traffic; or (2) any other such route as specified in the Construction Management Plan; or (3) any other such route not prohibited in the Construction Management Plan as the Applicant shall agree with the Wellesley Chief of Police prior to its use.
13. During the period of construction, all deliveries of construction materials and equipment shall be made only on Monday through Friday no earlier than 7:00 a.m. and no later than 6:00 p.m. Exterior construction work may be performed on the Site Monday through Friday commencing not earlier than 7:00 a.m. and completing not later than 6:00 p.m., or Saturday commencing not earlier than 8:00 a.m. and completing not later than 4:00 p.m. No work shall be performed on Sundays or local, state or national holidays celebrated in the Town unless such other hours are approved by the Chief of Police.
14. During the period of construction, on-site parking for construction workers and for construction equipment is specifically permitted, and no vehicles of construction workers and no construction equipment shall be parked on any public way of the Town other than Russell Road. Parking on Russell Road shall be as specified in the Construction Management Plan. In the event that construction parking demand exceeds the on-site parking supply, the Applicant will provide for construction parking at such private lots as the Applicant can arrange. Trucks and construction vehicles on-site shall shut off engines when not in use, or when idling time exceeds five minutes.
15. All construction and delivery vehicles exiting the Site shall stop at an established construction exit for a wheel wash to prevent the entrance of deleterious materials onto

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the streets of the Town. The Applicant shall cause Russell Road to be swept as frequently as required in the event that dust, dirt and debris not completely removed by the truck wash are deposited on Russell Road.

16. Insofar as practicable, refueling of construction equipment on the Site shall be prohibited. In the event that on-site refueling cannot be avoided, such refueling shall be performed with due consideration to spill prevention and control measures that should reasonably be applied, and in areas remote from the environmentally sensitive areas.
17. The Applicant shall complete the Required Work to remediate a portion of Russell Road as defined in the Agreement to Upgrade dated as of May 27, 2022 by and between the Applicant and the Town.
18. The applicant shall perform the work in accordance with the permit and order of conditions of the Wetlands Protection Commission dated as of July 21, 2022.

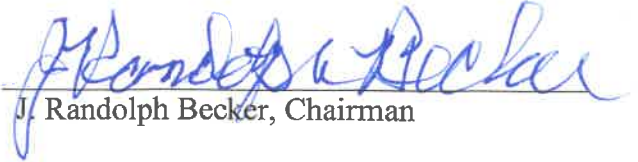
Use Conditions

19. The stormwater management system design shall function consistent with the Approved Plans, and with the "Revised Stormwater Management Report," prepared by Site Engineering Consultants, dated April 8, 2021, and shall be maintained by the Applicant or its appointed manager.
20. Landscaping shall be in conformance with the Landscaping Plan and shall be maintained, repaired, or replaced as needed by the Applicant.

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Petition of Edward & Michelle Jacobs
97 Russell Road

APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN THE
OFFICE OF THE TOWN CLERK.


J. Randolph Becker, Chairman


Robert W. Levy


Walter B. Adams

ZBA 2021-56
Applicant Edward & Michelle Jacobs
Address 97 Russell Road

NOT VALID FOR RECORDING UNTIL CERTIFIED BY TOWN CLERK

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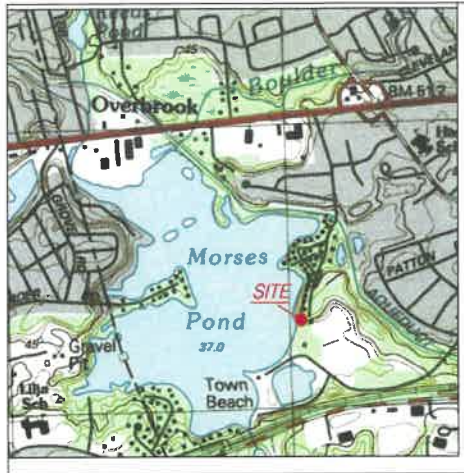
In accordance with Section 11 of Chapter 40A of the Massachusetts General Laws, I hereby certify that twenty (20) days have elapsed after the within decision was filed in the office of the Town Clerk for the Town of Wellesley, and that no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied.

Date:

Attest:

Cathryn Jane Kato
Town Clerk

cc: Planning Board
Inspector of Buildings
lrm



LOCUS - NOT TO SCALE

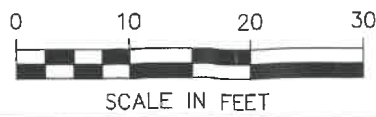
ZONED - SR-10 (PRE 1/24/1985)		
	REQUIRED	EXISTING
MINIMUM AREA	10,000 SF	7,629 SF
MINIMUM FRONTAGE	60'	20'
FRONT SETBACK	30'	4.6'
SIDE SETBACK	20'	0', 10.2', 10.8'
REAR SETBACK	10'	116.2'

LOT AREA: 7,546 S.F.
EXISTING LOT COVERAGE = (14.0%) 1,053.4 S.F.



NOTE:
ALL PLAN ELEVATIONS ARE ON
ASSUMED DATUM BASED ON
TOPOGRAPHIC PLAN OF LAND
IN WELLESLEY, MASSACHUSETTS
#97 RUSSELL ROAD
FEB. 26, 2013
BY DANA J. STANLEY

OWNER:
EDWARD JACOBS
DEED REFERENCE:
BOOK 25713 PAGE 576
PLAN REFERENCES
1.) BOOK 68 PAGE 3272

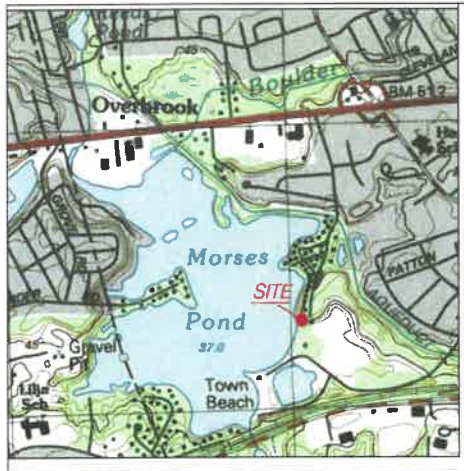


Dennis O'Brien P.L.S.

D. O'BRIEN
LAND SURVEYING
31 HAYWARD STREET UNIT 3-C
FRANKLIN, MA 02038 508-541-0048

PLAN SHOWING PROPOSED BUILDING
97 RUSSELL ROAD
WELLESLEY, MA NORFOLK COUNTY

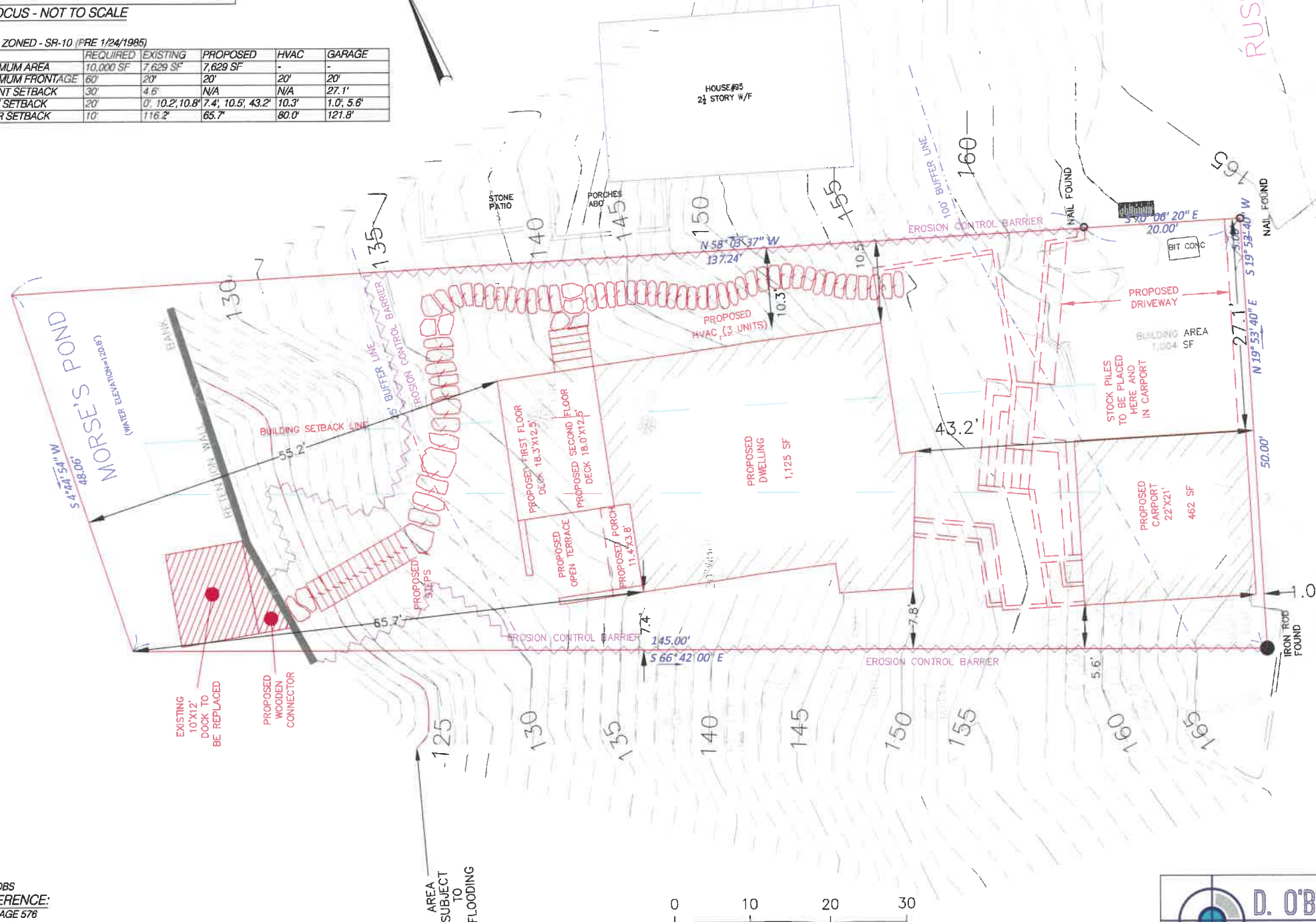
SCALE: 1" = 10'	DATE: 9/6/2017	REVISED: 12/10/2021	DRAWN BY: MFW	CHECKED BY: D.O.
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LOCUS - NOT TO SCALE

ZONED - SR-10 (PRE 1/24/1985)					
	REQUIRED	EXISTING	PROPOSED	HVAC	GARAGE
MINIMUM AREA	10,000 SF	7,629 SF	7,629 SF	-	-
MINIMUM FRONTAGE	60'	20'	20'	20'	20'
FRONT SETBACK	30'	4.6'	N/A	N/A	27.1'
SIDE SETBACK	20'	0', 10.2', 10.8'	7.4', 10.5', 43.2'	10.3'	1.0', 5.6'
REAR SETBACK	10'	116.2'	65.7'	80.0'	121.8'

LOT AREA: 7,546 S.F.
EXISTING LOT COVERAGE = (14.0%) 1,053.4 S.F.
PROPOSED LOT COVERAGE = (24.6%) 1,859.4 S.F.



NOTE:
ALL PLAN ELEVATIONS ARE ON
ASSUMED DATUM BASED ON
TOPOGRAPHIC PLAN OF LAND
IN WELLESLEY, MASSACHUSETTS
#97 RUSSELL ROAD
FEB. 26, 2013
BY DANA J. STANLEY

OWNER:
EDWARD JACOBS
DEED REFERENCE:
BOOK 25713 PAGE 578

PLAN REFERENCES
1.) BOOK 68 PAGE 3272



Dennis O'Brien P.L.S.



PLAN SHOWING PROPOSED DWELLING
97 RUSSELL ROAD
WELLESLEY, MA NORFOLK COUNTY

SCALE: 1" = 10' DATE: 9/6/2017 REVISED: 12/10/2021 DRAWN BY: MFW CHECKED BY: D.O.